HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.385 of 2006

Between:

Nallappaiahgari Mallanna and another … Appellants

And

The District Panchayat Officer and others

… Respondents

::JUDGMENT::

Counsel for the appellants: Sri Kothapalli Ram Mohan Rao

Counsel for respondents No.1

And 2: Government Pleader for Panchayat Raj

Counsel for respondent No.3: Sri P. Veera Reddy

April 13, 2006

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 1-2-2006 passed by the learned Single Judge in Writ Petition No.12651 of 2005 whereby he refused to accept the appellants' prayer against their threatened dispossession from land measuring Ac.2-40 cents comprised in Survey Number 252 (1) situated in Kundirpi Village and Mandal, Anantapur District.

In the affidavit filed by him, Nallappiahgari Mallanna (appellant No.1) averred that land in Survey Numbers 252 (2) and 252 (3) is recorded in the name of his father and father-in-law of appellant No.2 and the land in question is adjacent to those survey numbers. According to the appellants, their ancestors had planted about 22 tamarind trees on the land comprised in Survey Number 252 (1) and they were reaping the benefit of the trees. The father of appellant No.1 and father-in-law of appellant No.2 made representation dated 2-10-1950 to District Collector, Anantapur for grant of patta of trees and respectables of the village had supported their claim. However, the concerned authority did not pass any order on their representation. After 55 years, District Panchayat Officer issued notice dated 20-4-2005 to the Sarpanch of Kundirpi Gram Panchayat to show cause as to why action should not be taken against him for his failure to auction tamarind trees standing on Survey No.252(1) which has been recorded as government poramboke. This development impelled them to think that the respondents are out to dispossess them without giving any notice and opportunity of hearing and without following the procedure established by law.

The writ petition filed by the appellants was registered as W.P.No.12651 of 2005. They also filed WPMP No.16068 of 2005 seeking a direction to the respondents not to dispossess them from the land in question. By an order dated 15-6-2005, the learned Single Judge restrained the respondents from dispossessing the appellants. On receipt of notice, respondent No.3 filed WVMP No.1915 of 2005 for vacating the ad-interim order. At that stage, the learned Single Judge, after hearing learned counsel for the parties, passed the impugned order. He held that the writ petitioners (appellants herein) do not have any right over the land in question and they cannot resist the action of the third respondent in putting usufructs of the tamarind trees to

auction.

Sri Kothapalli Ram Mohan Rao Chowdary, learned advocate for the appellants heavily relied on representation dated 2-10-1950 jointly made by the father of appellant No.1 and father-in-law of appellant No.2, as also the statement made by them before Revenue Inspector, Kundirpi on
4-12-1951 and submitted that these documents should have been treated by the learned Single Judge as sufficient for drawing an inference that the appellants have semblance of right over the land in question. Learned counsel argued that even though pattas were not issued in favour of the ancestors of the appellants, they cannot be forcibly evicted from the land comprised in Survey Number 252 (1) without following due process of law and the learned Single Judge gravely erred by refusing to entertain their prayer against threatened dispossession.

We have considered the submissions of the learned counsel, but have not felt impressed. In our opinion, the learned Single Judge did not commit any error by rejecting the appellants' prayer. A reading of application dated 2-10-1950 jointly made by the predecessors of the appellants shows that they had claimed ownership and possession of Survey Number 252 (2) and 252 (3), and not Survey Number 252 (1). The only thing said about third survey number was that their ancestors had planted tamarind trees. They prayed for grant of tree patta with reference to Survey Numbers 252 (1) and 226. It is not clear from the record whether the application made by the ancestors of the appellant had been entertained, but this much is clear that they too did not have any semblance of right over the land comprised in Survey Number 252 (1). Therefore, the possession, if any, of the appellants has to be treated as unauthorized. As per the revenue records, Survey Number
252 (1) is government poramboke. Therefore, the appellants do not have any right over that land and they cannot seek a direction from the Court which may legitimize their unauthorized occupation of government land.

With the above observations, the appeal is dismissed.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

April 13, 2006

Svs/vtv